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In re Application of :
ZIV :
Application No.: 10/593,367 (10/599,025) : DECISION
PCT No.: PCT/IL2005/000303 :
Int. Filing Date: 17 March 2005 :
Priority Date: 18 March 2004 :
Attorney's Docket No.: 445/05410 :
For: APPARATUS FOR THE TREATMENT OF :
FEMININE PELVIC ORGAN PROLAPSE :

This decision is in response to applicant's "Request For Refund Under 37 CFR 1.26" filed 14 July 2008 in application 10/593,367 and "Request to Withdraw Notification of Missing Requirements" in application 10/599,025 filed 29 July 2008 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 17 March 2005, applicant filed international application PCT/IL05/00303 which claimed priority to an earlier application filed 18 March 2004. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 22 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 September 2006.

On 18 September 2006, applicant filed pursuant to Express Mail from the United States Postal Service a transmittal letter for entry into the national stage in the United States which was accompanied by the requisite basic national fee, an application data sheet, un-executed declaration of the inventor and a preliminary amendment. The international application number listed on the transmittal letter was PCT/IL2005/000303 and was assigned U.S. serial number 10/593,367.

Also on 18 September 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US) electronically via EFS-Web. The submission included a copy of the papers filed and assigned U.S. serial number 10/593,367. The international application number keyed into EFS-Web was PCT/IL05/87153. The Transmittal Letter indicated the international application number as PCT/IL2005/000303.

On 23 October 2007, applicant was mailed a "NOTIFICATION OF MISSING

REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) in application 10/593,367 informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 02 July 2008, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) in application 10/599,025 informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 14 July 2008, applicant filed the request for refund discussed herein.

On 29 July 2008, applicant filed the request to withdraw the notification of missing requirements discussed herein.

DISCUSSION

As shown above, notwithstanding applicant's assertions that "Serial Number 10/599,025 is not one filed by the undersigned" applicant did in fact file two separate U.S. National stage filings on 18 September 2006. Applicant provided authorization to charge all relevant fees at the time of filing. Applicant now seeks a refund of the fees charged in application 10/599,025 and the vacating of the Form PCT/DO/EO/905 in that case. While the filing of two national stage applications of the same international application is improper, applicant's second filing identified a different international application number, PCT/IL05/87153. Therefore, before applicant's request for refund can be granted applicant is required to provide clarification as to the electronic filing of 18 September 2006. The response should set forth the specific circumstances as to how and when the error was made and should set forth that the mistake was an inadvertent error without deceptive intent. A copy of the electronic acknowledgement receipt for application 10/599,025 is included for applicant's convenience.

CONCLUSION

For the reasons detailed above, applicant's request for refund is **DISMISSED**.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available. Failure to timely file a proper response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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Atth: N417 Receipt